194 2 File No. #S Dwr 4/45

Legal DEPARTMENT

A BRANCH

Xamined

Subject:— Dharwar Civil Suit

No 510/43 now Hubli Suit

No 255 of 1944

Venkusa Hanamantha Habib of Hubli Plff

VS

1) The Governor Generalin Council

2) Feroz Khan Nasir Bux of Defts-

P=9

E

File No. S Dwr 4/45—

Std. Sectt. Slip 24-B

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960—10,600—9-37—R2—st.
G. R., G. D., No. 2408, dated 22-6-22.]

Sectt. 7

DOCKET SHEET (B)

Subject: Dharwar C.S., No 670/43 now 255/44 Venkusa Hanamantasa Habib vs Habib vs The Governor General in Council

File No. 205/45

Legal **DEPT.**

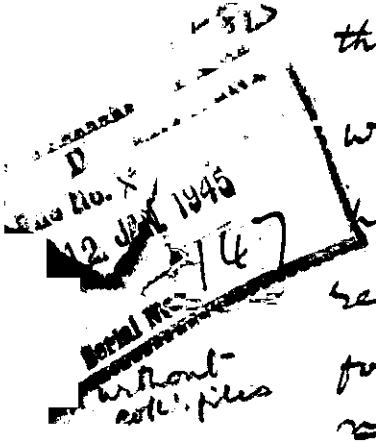
A **BRANCH.**

References:—

Date	To whom sent.	Notes and instructions.
8.1.45	I.A.	Subd.
	Asstt V	Pages 351-356 of file Misc. A/44 pertaining to this suit may be removed and put up with this case.
		20/2 10/1
		P.A. 10/1 S.A.S. 10/1
		D. Branch. Subd. Pages nos. 351-356 of file Misc A/44 have been removed from the file & put up herewith the papers may now be sent to A Branch
		11/1
		Mr Rege.
		Pl change the file marking of pages 1-6. Given new suit no for Appeal file
		Done 9/1/45

Submitted with ref. to A.S.'s orders at p. 8 ante.

2. The Govt. of India's letter referred to in the letter from the Major General, Comd. at p. 1 ante does not appear to have been received in L.D. Informal inquiries were made in H.D. but it was not possible to get the letter. These papers may be forwarded to H.D. and H.D.(Cipher) unofficially and those depttˢ may be requested to furnish L.D with a copy of the letter. If the required letter has not been received in those depttˢ, they may be requested to obtain a copy * from Govt. of India forward it to L.D.



A.S. Dr u/r Ltr. to H.D. H.D (Cipher) No.3362/42-1-1

H-D

The letter in question was has not been received in H-D (Prope

(through F-B)

20/1/45

18/1

20/1

A.B.

S.A.(2)

HOME ... (SPECIAL).

Ref.

Date

11/1/45

Submitted.

It appears that it will take some time to obtain sanction of Govt. to Dharwar C.S. No. 570, now No. 255 of 1944, as the Govt. of India letter referred to in the letter of Maj. Gen. Comd. is not available. HQ has been requested to obtain a copy that letter. Meanwhile the D.G.P. Dharwar may be requested to obtain at least two months adj. Memo is put up below.

20/1

AS 22

This relates to Hubli Suit No.255 of 1944. Plaintiffs are the husband, son and mother respectively of one Ambubai who was knocked down while crossing a road by a military lorry and died as a result of the injuries received by her. Plffs. sue to recover Rs.2000/- as damages. Defendant No.1 is the Governor General in Council. Defendant 2 is the lorry driver. Since the accident he has been discharged from service.

2. The main defence on behalf of defendant No.1 is that Government is not liable in damages for the wrong committed by its servants. On merits, in respect of defendant 2's negligence, the Government case is not very strong. The police had launched a prosecution against defendant 2 for an offence under section 304 A of the I.P.C. but the accused was not traced and the case was ultimately withdrawn.

3. The formal sanction to the defence of the suit is to be granted by the Commander, Poona Area (slip K). This has been explained to Major Lamb who saw A.L.R. and myself last week. The sanction is expected shortly.

4. I have slightly revised the draft written statement submitted by the D.G.P. and it is put up for approval. It may be forwarded along with papers to Major Lamb, D.A.D Claims, for arranging to get it signed and verified by the proper authority in accordance with Government of India Notification, Judicial, No.204/37, dated 11-4-1940. He may be requested to forward it directly with the papers to the D.G.P. A copy of the letter should be sent to D.G.P. A brief is also appended.

Slip U.

20/2

[ADC R] D.S. as he wants to deal with some suits.

22/2

Returned by D.S. as he has other work. The brief grounds of defence are well approved.

22/2/45

RLA

22/2/45

Dharwar Civil Suit No.255 of 1944.

Chronological Statement of Facts.

Plaintiffs sue to recover Rs.2000/- as compensation for loss occasioned by the death of one Ambubai alleged to have been caused by the rash and negligent driving of defendant No.2. Plaintiffs are respectively the husband, son and mother of the deceased. Defendant No.2 was a motor-driver in the employment of defendant No.1 at the time of the accident.

2. On 21-12-42 at about 10 A.M. Ambubai was crossing the road at the point shown in the sketch on page 51, when the motor lorry No. T 94802 driven by defendant No.2 knocked her down. As a result of the injuries received by her she expired on 22-2-43.

3. The Police Sub-Inspector's report is at page 57 of the papers. A medical certificate is at page 21. Defendant No.2's statement is at page 47. Another person who was seated beside defendant No.2 in the same lorry has made a statement which is at page 46.

4. Defendant No.2 was discharged from service on medical grounds in June 1943.

5. On or about 3-4-43 the District Superintendent of Police directed the prosecution of Defendant No.2 for an offence under section 304A of the Indian Penal Code and a charge sheet was sent to the Sub-Divisional Magistrate, First Class, Hubli City on 7-6-43; but the accused could not be traced and the case was withdrawn by the District Magistrate on or about 6-11-43.

6. Plaintiffs gave notice of suit under section 80 of Criminal Procedure Code to the Secretary to the Government of India, Defence Department and the same was received by ~~this~~ that officeron 23-9-43.

7. This suit was filed on 21-12-43 for the relief stated as above.

Dharwar Civil Suit No. 255/44.

Grounds of Defence.

Notice. Section 80 of the C.P.C. provides not only that a notice should be sent to the authority described in the section, but also "that the plaint shall contain a statement that such notice has been so delivered or left". It appears that a notice was duly sent by plffs. to the Secretary, Government of India, Defence Department; therefore the first of the above requirements of the section has been complied with. There is however no statement in the plaint about the notice having been so sent to the Government of India or its Secretary. Consequently there is no full compliance with the provisions of section 80 and the suit does not lie. It would no doubt be contended that the statement in para. 12 of the plaint that "The requirements of section 80 of C.P.C. are complied with is a sufficient statement. But really speaking that is only an ~~ascertain~~ assertion of a compliance and not actual compliance itself. For the latter purpose it was necessary to make the statement expressly required by the section. That statement is absent. See Chitaley's C.P.C. note 17 to section 80 and A.I.R. 1937 Sind 291. The terms of the section are imperative and admit of no exceptions or implications; see Bhagchand v. Secretary of State 51 Bom. 725 (P.C.).

2. Cause of action. The plaint discloses no cause of action against Government. The suit is for the alleged negligence of defendant No.2. The general principle of a master's liability for torts committed by his servant in the ordinary course employment does not apply in the case of the Crown. Regarding the liability of the Government of India as representing the Crown it has been held that an action would not lie in those matters in which it acts in the exercise of its sovereign

functions. This rule of non-liability has been applied by the Courts to all acts done in the performance of proper functions of Government. "The absence of any profit, the securing of the public benefit ~~above~~ alone, are some indicia of the acts having been done in the public capacity", (39 Mad. at p. 359). Defendant 2 on the plaintiff's own showing was employed in the military department and that department is maintained for the defence of the country obviously in the discharge of sovereign functions of Government. Therefore the Crown would not be liable in damages in respect of the alleged negligence of defendant 2. See P. & O. Steam Navigation Company V. Secretary of State 5 Bom.H.C.R. App.1; Shivbhajan V.Secretary of State 28 Bom. 314; Secretary of State v. Cockcraft 39 Mad. 351; Ross v. Secretary of State 39 Mad. 781, Etti. v. Secretary of State I.L.R. 1939 Mad. 843; Maharani of Nabha v. The Province of Madras 1944 F.L.J.115.

3. Merits. It may possibly be contended that in view of the prosecution of defendant 2 by the Police for an offence under section 304A of the I.P.C. Government is precluded from denying the def. 2's negligence. But this is not correct. The police officers after all in instituting the prosecution depended upon certain statements made before them. The truth or the adequacy of these statements for the purpose of establishing a rash and negligent act would have been determined by the Criminal Court alone. The opinion or belief of the police officers had no relevance then and would have none now in the civil court. Government may therefore deny the plff's' allegations about def. 2's negligence and put the plf s. to strict proof thereof. Lastly, the statements to some extent show that Ambubai may have been guilty of contributory negligence. This point should be brought out in evidence. If it is proved

that the ~~deciding~~ decisive cause of the ~~incident~~ accident was Ambubai's own negligence, pl'fs. would not be entitled to recover damages; See.... Iyer's Law of Torts, pp. 447 ff.

4. Amount of damages. Under the Fatal Accidents Act compensation is awarded for the loss of the actual pecuniary benefit which the beneficiary might reasonably have expected to enjoy, had the person not been killed; De Mello- V.Meridian Electrical Co. 39 Bom.L.R.402; Bolbai V.Pestonji 37 Bom.L.R. 410; Iyer's Torts pp. 68-72. The damages claimed in paras. 2 to 4 of the plaint appear to be admissible, although the amount claimed is excessive. The damages claimed in para. 5 are remote and cannot be ~~recognised~~ recognised by Court. At best they are alternative to those claimed in para. 3.

5. General. The D.G.P. should move the Court to frame a preliminary issue whether pl'ffs. have a cause of action against the Govt. As the law appears clear, so much trouble of ~~going~~ going into evidence will be saved if the suit is decided on the preliminary issue.

45 13

In the Court of the First Class Sub-Judge, Dharwar.

Civil Suit No.255 of 1944.

Venkusa Hanamantsa Habib of Hubli.....Plaintiff;

vs.

1. The Governor General in Council
2. Ferozkhan Navi Bux of R.I.A.S.C. Badge No.9260/76, driver of the Military motor No.T.94802. .....Defendants.

Written statement of the defendant No.1 herein is as follows:-

1. The plaint does not comply with the requirements of Section 80, Civil Procedure Code in that it does not contain a statement that the notice was delivered to or left at the office of any authority at any particular time. The suit is therefore not maintainable.

2. Assuming but not admitting the truth of the allegations made in the plaint regarding the manner of accident resulting in the death of plaintiff No.1's wife, Ambubai, and regarding the loss incurred by the plaintiffs plaintiffs have yet no cause of action against this defendant, [illegible]

3. This defendant is not liable for the alleged rash & negligent action of the defendant No.2 in driving the motor lorry and for the subsequent death of plaintiff's mot' wife. This defendant has not ratified the action of defendant No.2 in any way.

4. The allegations in para.1 of the plaint that defendant No.2 was, at the material time, driving his motor lorry, rashly and negligently and ~~carelessly~~ without exercising proper diligence and without blowing the horn are not admitted. Plaintiff ~~is~~ are put to strict proof of the same. From the report submitted to the District Magistrat Dharwar, the defendants submits that ~~plaintiff~~ Ambubai was guilty of contributory negligence.

5. The allegations regarding the claim of damages and the details thereof made by the plaintiffs in para.2 to 5 of the plaint are not admitted. In any event, plaintiff's

claim of Rs.800/- on account of expenses ~~for his~~ of Pltff no1's remarriage is not legally maintainable.

6. This defendant is not liable to pay damages to the plaintiff's for the tort if any committed by defendant 2. The claim made by the plaintiff's is excessive.

7. Plaintiff's'suit should be dismissed with costs.

59 5

No.CCI A/II0/2I22I/I. 15

Claims Commission.
District Office.
Staunton Road,POONA.
Tel No.252 Extn.62.
I2 April I945.

To:-
The District Government Pleader,
D H A R W A R.

Sir,

Traffic Accident - 2I Dec 42 - Dharwar L.C. Suit No.5I0/ I943 now L.C.Suit No.255 of I944 of F.C.Court HUBLI.

I. Reference your No.206 dated 2 April 45, I enclose herewith the following documents:-

(i) File I. Your File.
(ii) File II. File of Collector of [redacted]arwar.
(iii) File III. File from Remembranc[redacted] of Legal Affairs.

2. Included in File III are the written statements for filing prepared by the Remembrancer which have been verified by the Area Commander and sanction to the defence of the suit.

3. I am instructed to inform you that the offer of Rs.500/- previously made to the plaintiffs remains open for acceptance until the disposal of the suit and that a further sum of Rs.50/- towards the plaintiffs legal costs may be sanctioned. It is considered that the plaintiffs, on being advised of the strength of the defence based on sovereign rights, may well accept the offer of compensation which has been made.

4. Will you please keep me informed of the progress of the suit and the date fixed for the hearing or any acceptance by the [redacted]-intiffs of the above mentioned offer.

5. Kindly acknowledge receipt of the documents.

Yours faithfully,

Captain.
C.C.D.O.